

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

In Re: Commonwealth of Pennsylvania's	:	CIVIL NO. 1:13-CV-2103
Rule to Show Cause	:	
	:	(Judge Caputo)
filed in	:	
	:	
COMMONWEALTH OF PENNSYLVANIA	:	
	:	
v.	:	
	:	
WILLIAM HOUSMAN	:	

MOTION TO REMAND

TO JUDGE A. RICHARD CAPUTO,
UNITED STATES DISTRICT COURT JUDGE:

AND NOW, comes Matthew P. Smith, Chief Deputy District Attorney, who files this Motion to Remand. *See* 28 U.S.C. § 1447(c) (motion to remand may be filed within 30 days after filing of notice of removal).

On July 8, 2013, in the Commonwealth of Pennsylvania criminal case of Commonwealth v. Housman, CP-21-CR-246-2001 (Cumberland County), the Commonwealth filed a Rule to Show Cause as why attorneys Shawn Nolan and Eric Montroy, acting in their capacities as attorneys for the Federal Community Defender Office ("FCDO"), should not be removed from the state case for improper expenditure of federal funds. In turn, the FCDO engaged attorneys Thomas B. Schmidt, III, and David Richman of Pepper Hamilton, LLP, who were joined by attorneys Patrick J. Carome, Paul R.Q. Wolfson, and Joshua M. Salzman (all pro hac vice) of Wilmer Cutler Pickering Hale and Dorr, LLP., who, pursuant to 28 U.S.C. §1442, filed a Notice of Removal in the instant action on August 7, 2013.

Removal in this case is inappropriate. Under Feidt v. Owens Corning Fiberglass Corp., 153 F.3d 124, 127 (3d Cir. 1998)(internal citation and quotations omitted) , the FCDO must establish that:

(1) it is a “person” within the meaning of the statute; (2) the plaintiff’s claims are based upon the defendant’s conduct “acting under” a federal office; (3) it raises a colorable federal defense ; and (4) there is a casual nexus between the claims and the conduct performed under color of a federal office.

The FCDO can neither establish that it is “acting under” a federal office nor establish a casual nexus between the claims and conduct performed under color of federal office.

Pursuant to L.R. 7.5, the Commonwealth will file a supporting brief on or before September 18, 2013.

WHEREFORE, the Commonwealth asks this Honorable Court to Grant the Motion to Remand and close the case.

Dated: September 4, 2013.

Respectfully submitted,

/s/

Matthew P. Smith (PA 89552)
Cumberland County District Attorney’s Office
1 Courthouse Square, Rm 202
Carlisle, PA 17013
717.240.6210
mpsmith@ccpa.net

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

In Re: Commonwealth of Pennsylvania's	:	CIVIL NO. 1:13-CV-2103
Rule to Show Cause	:	
	:	(Judge Caputo)
filed in	:	
	:	
COMMONWEALTH OF PENNSYLVANIA	:	
	:	
v.	:	
	:	
WILLIAM HOUSMAN	:	

ORDER

After reviewing the Notice of Removal and the Motion to Remand,

IT IS HEREBY ORDERED THAT:

- 1 - The Motion to Remand is hereby GRANTED;
- 2 - The Rule to Show Cause filed by the Commonwealth in the state PCRA court proceedings at *Commonwealth v. Housman*, No. CP-21-CR-0000246-2001 is REMANDED to the Cumberland County Court of Common Pleas;
- 3 - The Clerk of Court is directed to CLOSE this case.

JUDGE A. RICHARD CAPUTO,
UNITED STATES DISTRICT COURT

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

In Re: Commonwealth of Pennsylvania's	:	CIVIL NO. 1:13-CV-2103
Rule to Show Cause	:	
	:	(Judge Caputo)
filed in	:	
	:	
COMMONWEALTH OF PENNSYLVANIA	:	
	:	
v.	:	
	:	
WILLIAM HOUSMAN	:	

CERTIFICATE OF SERVICE

I hereby certify that I am this day serving the foregoing motion upon the persons below via the ECF filing system:

Shawn Nolan, Esquire
Federal Defender Office
Capital Habeas Corpus Unit
601 Walnut Street, Suite 545 West
Philadelphia, PA 19106
(215) 928-0520

Thomas B. Schmidt III, Esquire
Pepper Hamilton LLP
3000 Two Logan Sq.
18th & Arch Street
Philadelphia, PA 19103
(215) 981-4000

BY:

_____/s_____
Matthew P. Smith
Chief Deputy District Attorney
Pa. Bar No. 89552

OFFICE OF THE DISTRICT ATTORNEY
CUMBERLAND COUNTY
ONE COURTHOUSE SQUARE, RM 202
CARLISLE, PENNSYLVANIA 17013
PHONE: (717) 240-6210

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

In Re: Commonwealth of Pennsylvania's Rule to Show Cause	:	CIVIL NO. 1:13-CV-2103
	:	
	:	(Judge Caputo)
filed in	:	
	:	
COMMONWEALTH OF PENNSYLVANIA	:	
	:	
v.	:	
	:	
WILLIAM HOUSMAN	:	

CERTIFICATE OF NON-CONCURRENCE

In compliance with this Court's Local Rule 7.1, the attorney for the respondent (FCDO), Thomas B. Schmidt III, was contacted regarding Commonwealth's Motion to Remand and indicated that he opposes the motion.

Dated: September 3, 2013.

SIGNED:

_____/s_____
Matthew P. Smith
Chief Deputy District Attorney
Pa. Bar No. 89552

OFFICE OF THE DISTRICT ATTORNEY
CUMBERLAND COUNTY
ONE COURTHOUSE SQUARE, RM 202
CARLISLE, PENNSYLVANIA 17013
PHONE: (717) 240-6210